

APPEAL NO. 033064  
FILED JANUARY 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 7, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury in the form of bilateral carpal tunnel syndrome (BCTS); that the date of injury is \_\_\_\_\_; that the claimant timely reported her injury; and that the claimant had disability beginning June 20, 2003, and continuing through the date of the CCH. The appellant (carrier) appealed, arguing that the determinations of the hearing officer are not supported by the evidence or alternatively, "are supported by insufficient evidence against the great weight of evidence, such that they are in error and should be reversed." The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that her job duties included both working as a cashier in addition to helping unload the delivery truck and stocking, which required her to open numerous boxes with her hands. An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36). Conflicting evidence was presented on this disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's compensability determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 409.001(a)(2) provides that an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Section 409.002 provides that failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless the employer or the carrier has actual knowledge of the employee's injury, the Texas Workers' Compensation Commission determines that good cause exists for failure to provide notice in a timely manner, or the employer or the carrier does not contest the claim. It was undisputed that the claimant reported her injury on May 23, 2003. However, the dispute centered around what the date of injury was. The date of injury, when the claimant knew or should have known that her injuries may be related to the employment, and whether the carrier is relieved from liability because it did not receive timely notice of the injury, were also issues for

the hearing officer to resolve. Conflicting evidence was presented regarding the date of injury. The claimant testified and the hearing officer found that on May 9, 2003, diagnostic testing confirmed the claimant had BCTS. However, the hearing officer found that the claimant first knew her BCTS was the result of her physical activities at work when her doctor discussed causation with her on \_\_\_\_\_. While the hearing officer found that an ordinary, reasonably prudent person in the same circumstances and situation as the claimant would have known on April 7, 2003, for the first time she might have carpal tunnel syndrome, the hearing officer also found that such a person would not have thought on that date that it might be related to her employment. The hearing officer's determination of date of injury and timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**NO  
(ADDRESS)  
(CITY) TEXAS (ZIP CODE).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge